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04/24/2006

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72187

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23872 7590 08/06/2010
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EXAMINER

JOHNSON, PHILLIP A

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Please find below and/or attached an Office communication concerning this application or proceeding.

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EXAMINER

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Commissioner for Patents

The attached contains a correction to the conferee signature recorded in the Examiner's Answer, mailed on July 19, 2010, in response to the Appeal Brief filed on April 9, 2010.

/Richard WL Ridley/
Supervisory Patent Examiner, Art Unit 3656

/PHILLIP A. JOHNSON/
Examiner, Art Unit 3656



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/595,502
Filing Date: April 24, 2006
Appellant(s): GIEFER ET AL.

John James McGlew
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 9, 2010 appealing from the Office action mailed November 12, 2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

Support for 35 U.S.C 112, Sixth paragraph limitations ("means for transmitting electrical and/or optical signals") in claim 2 appears to be deficient. The disclosure identified by the Appellant only describes a means for transmitting optical signals. Support should also include disclosure on page 4, paragraph [0011], lines 16 – 17.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

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subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

5,706,701	MURAKAMI	1-1998
4,558,609	KIM	12-1985
7,032,474	TUCKER	4-2006
5,588,329	NEDACHI	12-1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 – 8, 11 – 15 and 17 – 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murakami (USP 5,706,701) in view of Kim (USP 4,558,609).

Re claim 1, Murakami (Fig. 1) discloses a housing structure 25; a selector lever 24, said selector lever 24 having an upper portion; a hand knob (element 1 with constituent parts 4 and 5); a connection cable (Fig. 6; 6) comprising one or more lines; a switch 3; an adapter (Fig. 6; 9) mounted on said upper portion of said selector lever 24; said adapter 9 having an outer surface, said outer surface defining a recess (Fig. 6; 9d), wherein at least a portion of said one or more lines extends within said recess 9d; said adapter 9 defining a connection between said selector lever 24 and said hand knob 1 (Fig. 5); and a shifting gate 26.

Murakami does not expressly disclose said adapter having said switch integrated therewith.

Kim (see Fig. 1 – 3), in a similar device, teaches an adapter 41 having a switch corresponding to assembly of elements 50, 51 and 54 integrated therewith that reduces the assembly complexity, thereby improving serviceability over knobs with integrated switches. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Murakami to include an adapter having a switch integrated therewith, as taught by Kim, for the purpose of reducing assembly complexity, thereby improving serviceability.

Murakami as modified by Kim does not expressly disclose said adapter being located at a position above the shift gate.

As the applicant is silent to any unexpected results arriving from said adapter being located at a position above the shift gate, it would have been an obvious matter of design choice to have provided such an arrangement with Murakami as modified by Kim having said adapter being located at a position above the shift gate, and since it appears that the prior art would perform perfectly well gate (*the adapter located above the would not have an impact of the adapter's function, since it merely serves to provide cable routing, positioning and retention assurance*) with said adapter being located at a position above the shift gate

Accordingly, the device of Murakami and Kim as modified above discloses said hand knob being connected to said upper portion of said selector lever via said adapter.

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Re claim 2, the combination of Murakami and Kim as modified discloses said switch integrated in said adapter including a means for transmitting electrical and/or optical signals (Murakami discloses switch 3 as a means for transmitting electrical signal. Thus, the combination with Kim results in the adapter having integrated switch, with the switch representing a means for transmitting electrical signal).

Re claim 3, Murakami (Fig. 6) discloses said adaptor having a switch interface corresponding to receptacle element 16 for a connection cable 15.

Re claim 4, the combination of Murakami and Kim as modified discloses wherein said at least said portion of said one or more lines being located adjacent to said exterior surface of said adapter, said hand knob surrounding said adapter, said adapter having a top outer surface, said top outer surface defining a switch recess, said switch being located in said switch recess, said adapter and said hand knob being located at a spaced location from said shift gate, said shift gate being located at a position below said hand knob.

Re claims 5, Kim (Fig. 1 or 2) discloses said adapter 41 having a switch display part corresponding to a top surface of push button 53.

Re claim 6, the combination of Murakami and Kim as modified discloses a switch display part, said switch display part being arranged opposite said switch (Kim, Fig. 1 or 2; switch display part, which corresponds to a top surface of push button 53, is arranged opposite button structure on which the top surface is disposed).

Re claim 7, Murakami (Fig. 6) discloses said adapter 9 having at least one guide element (vertical rib portions disposed between guides 9c) for positioning hand knob 1.

Re claim 8, Murakami (Fig. 1) discloses said adapter 9 having a boring, into which said selector lever 24 can be at least partially inserted.

Re claim 11, Murakami discloses said adapter 9 having a plastic molding (col. 4, lines 35 – 36: *“The skeleton frame 9 is preferably formed of electrical-insulating hard synthetic resin...”*), which is injection-molded on the selector lever 24 via an [injection molding process] (Note: the recitation denoted by “[]” *refers to a process of making a product. The patentability of a product does not depend on its method of production - MPEP 2113*).

Re claim 12, Kim discloses said adapter 41 having an actuator button part corresponding to push button 53 connected to said switch 50, 51, 54.

Re claim 13, Kim (Fig. 1) discloses said hand knob 60 having an opening for access to said actuator button 53.

Re claim 14, Kim discloses said actuator button part 53 also comprising a switch display part corresponding to the top surface of actuator button part 53.

Re claim 15, Murakami (Fig. 1) discloses a support structure (not shown, but inherent to figure); a selector lever 24 comprising an upper selector lever portion and a lower selector lever portion, said lower selector lever portion being connected to said support structure (not shown, but inherent to figure); a connection cable (Fig. 6 – element 15); an adapter (Fig. 6 – element 9) mounted to said upper selector lever portion of said selector lever 24; said adapter 9 having an adapter outer side surface, said adapter outer surface defining a recess (Fig. 6 - 9d); said connection cable 15 being located within said recess 9d, wherein said connection cable 15 is located

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adjacent to said outer surface of said adapter 9; a hand knob, corresponding to element 1 with constituent parts 4 and 5, forming a gripping surface; (Fig. 5A) said adapter 9 defining a connection between said upper selector lever portion of said selector lever 24 and said hand knob 1; said adapter 9 being connected to said hand knob 1; the diameter of the selector lever 24 and the adapter 9 is smaller than a shift gap defined by side edges of a shift gate 26.

Murakami does not expressly disclose said adapter having an integrated switch.

Kim (see Fig. 1 – 3), in a similar device, teaches an adapter (41) having an integrated switch corresponding to an assembly of elements 50, 51 and 54 that reduces the assembly complexity, thereby improving serviceability over knobs with integrated switches. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Murakami to include an adapter having an integrated switch, as taught by Kim, for the purpose of reducing assembly complexity, thereby improving serviceability.

Accordingly, the combination of Murakami and Kim discloses said integrated switch including a switch interface (Murakami; Fig. 6 - element 16) for said connection cable and a means (Murakami; Fig. 6 – element 6) for transmitting electrical and/or optical signals.

Murakami as modified by Kim does not expressly disclose said adapter being located at a position above the shift gate.

As the applicant is silent to any unexpected results arriving from said adapter being located at a position above the shift gate, it would have been an obvious matter of

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design choice to have provided such an arrangement with Murakami as modified by Kim having said adapter being located at a position above the shift gate, and since it appears that the prior art would perform perfectly well gate (*the adapter located above the would not have an impact of the adapter's function, since it merely serves to provide cable routing, positioning and retention assurance*) with said adapter being located at a position above the shift gate.

Re claim 17, Murakami (Fig. 6) discloses said connection cable 15 having a line 6, said line 6 transmitting said electrical and/or optical signals from said transmitting means to said support structure, wherein said adapter 9 has at least one recess 9d in which said line 6 is disposed.

Re claim 18, Murakami (Fig. 6) discloses said adapter 9 having at least one guide element (vertical rib portions disposed between guides 9c) for positioning said hand knob 1.

Re claim 19, Kim (Fig. 1) discloses said adapter 41 having a part with at least one of an actuator button part corresponding to push button 53 and a switch display part corresponding to top a surface of push button 53 connected to said switch 50, 51, 54, said adapter 41 having a top outer surface, said top outer surface defining an integrated switch recess, said integrated switch 50, 51, 54 being arranged in said integrated switch recess, said hand knob 60 surrounding said adapter 41.

Re claim 20, Kim (Fig. 1 or 2) discloses said hand knob 60 having an opening for access to said at least one of an actuator button part and a switch display part corresponding to a top surface of push button 53 connected to said switch 50,51,54,

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said switch display part being disposed opposite said integrated switch (top surface of push button 53 is arranged opposite button structure on which the top surface is disposed).

Re claim 21, Murakami (Fig. 1) discloses a support structure (not shown, but inherent to figure); a selector lever 24 having an upper end and a lower end, said lower end being connected to said support structure (not shown, but inherent to figure); a connection cable (Fig. 6 – element 15) having one or more lines; an adapter (Fig. 6 – element 9) mounted to said upper end of said selector lever 24, said adapter 9 having a top outer surface; said adapter 9 having an adapter outer side surface, said adapter outer side surface defining a recess 9d, said one or more lines 6 being located within said recess 9d; (Fig. 6) said one or more lines 6 being located adjacent to said adapter outer side surface; A hand knob corresponding to element 1 with constituent parts 4 and 5 forming a gripping surface; said adapter 9 defining a connection between said selector lever 24 and said hand knob 1; (Fig. 5A) said hand knob 1 surrounding said adapter 9; the diameter of the selector lever 24 and the adapter 9 is smaller than a shift gap defined by side edges of a shift gate 26, whereby the shift gate 26 is passed over said selector lever 24 and said adapter 9, said hand knob 1 being arranged on said adapter.

Murakami fails to disclose said adapter having a top outer surface defining an integrated switch recess, wherein said adapter has an integrated switch arranged in said recess.

Kim (see Fig. 1 – 3), in a similar device, teaches an adapter (41) a top outer surface defining an integrated switch recess, wherein said adapter has an integrated

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switch corresponding to an assembly of elements 50, 51 and 54 arranged in said recess that reduces the assembly complexity, thereby improving serviceability over knobs with integrated switches. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Murakami to include a top outer surface defining an integrated switch recess, wherein said adapter has an integrated switch arranged in said recess, as taught by Kim, for the purpose of reducing assembly complexity, thereby improving serviceability.

Accordingly, the combination of Murakami and Kim as modified discloses said integrated switch including a switch interface (Murakami; Fig. 6 - element 16); and said one or more lines being connected to said switch interface (Murakami; Fig. 6).

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murakami in view of Kim as applied to claim 1, and further in view of Tucker (USP 7,032,074).

Murakami does not expressly disclose said adapter being fastened to said lever via a screw connection

Tucker (Fig. 2) teaches an adapter 65 fastened to a lever via a screw connection 64 that provides a serviceable shift device assembly for fastening at a selector lever. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combined device of Murakami and Kim as modified to include an adapter fastened to said lever via a screw connection, as taught by Tucker, for the purpose of providing a serviceable shift device assembly.

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Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murakami in view of Kim as applied to claim 1, and further in view of Nedachi (USP 5,588,329).

Murakami does not expressly disclose said adapter being fastened to said lever via a clip connection

Nedachi teaches (Fig. 1) an adapter (2) fastened to a lever (1) via a clip connection that provides a quick and reliable connection that reduces assembly time. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combined device of Murakami and Kim as modified to include an adapter fastened to said lever via a clip connection, as taught by Nedachi, for the purpose of providing a quick and reliable connection that reduces assembly time.

(10) Response to Argument

In regards to claim 1, the Appellant first alleges, "*Murakami fails to teach or suggest a switch adapter as featured in the present invention. Murakami discloses an overdrive control switch (OD switch) 3. However, the OD switch 3 of Murakami is provided on one side of the shift knob 1 and is not integrated with the skeleton frame 3 as claimed. This does not provide a switch adapter as featured in the present invention. Compared with Murakami, the switch adapter of the present invention includes the adapter 7 and the switch 5a integrated therewith. In contrast to the present invention, Murakami takes a very different approach by disclosing a skeleton frame 9 in which the OD switch 3 is not integrated with the skeleton frame 9. Murakami discloses that the OD switch 3 is merely provided on one side of the shift knob 1, but does not provide any*

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teaching or suggestion that would direct a person of ordinary skill in the art toward integrating the OD switch 3 with the skeleton frame 9 as claimed.”

The Examiner agrees that Murakami fails to disclose an adapter with a switch integrated therewith. However, the above deficiency as claimed is cured by Kim (see Fig. 1 – 3), which teaches an adapter 41 having a switch corresponding to assembly of elements 50, 51 and 54 integrated therewith as known modification that reduces the assembly complexity, thereby improving serviceability over knobs with integrated switches.

Second, the Appellant alleges, “Murakami fails to teach and fails to suggest the combination of a switch adapter located at a position above a shift gate wherein the outer surface of the switch adapter defines a recess which receives at a least a portion of a cable as claimed. The final rejection takes the position that the skeleton frame 9 of Murakami is the equivalent of the switch adapter of the present invention. Appellant respectfully disagrees with this interpretation as the skeleton frame 9 of Murakami does not include a switch integrated therewith and the skeleton frame 9 does not have an outer surface that defines a groove for receiving a cable as claimed. Even assuming the skeleton frame 9 of Murakami is the equivalent of the switch adapter of the present invention (which Appellant maintains it is not), the skeleton frame 9 includes guide holes 9d that are located below the shift slot 26. This is clearly shown in Figures 1, 5A and 6. This disadvantageously does not allow for a simple and quick electrical and/or optical connection of the conducting lines to the position-indicator cover assembly 25 as featured in the present invention.”

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As stated above, the above deficiency of an adapter with a switch integrated therewith is cured by the teaching of Kim. Further, the "a groove for a receiving a cable" is not required by the adaptor of Murakami as modified by Kim. Claim 1 merely requires the outer surface of adapter to define "a recess, wherein at least a portion of said one or more lines extends within said recess." Murakami clearly defines a recess corresponding to hole 9d that receives a portion of a line corresponding to conductor element 6. Additionally, the applicant is silent to the criticality the "adaptor being located at a position above the shift gate" as claimed. It appears that the adaptor of Murakami as modified by Kim would not encounter any unexpected results with a portion of the adaptor being positioned below or completely above the shift gate. The advantageous affect of the combination facilitates the preassembly of the switch to the selector lever prior to the assembly of the shift gate. Therefore, all electrical connections required are made without the hindrance of a shift gate. As such, the adapter according to the combination of Murakami and Kim would appear to work equally well at a position above or partially below the shift gate, since it merely serves to provide cable routing, positioning and retention assurance.

Third, the Appellant alleges, *"A person of ordinary skill in the art would not be directed to the teachings of Kim as Kim is not related to the field of motor vehicle shifting devices. Kim fails to appreciate the problems with mounting a shifting device in a motor vehicle since Kim only deals with the problem of mounting different handle assemblies on a joystick. The prior art references as a whole do not provide any suggestion of using the teachings of Kim to modify the device of Murakami. Kim deals*

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with a completely different technical field than that of Murakami. Instead of being concerned with providing a wiring-harness connection structure of a transmission shift-lever device for a motor vehicle as featured in Murakami, Kim is concerned with providing a joystick that has a handle member that can be removed so that a different handle assembly can be attached. Kim is not related to the field of motor vehicle transmission shifting devices.”

The Examiner respectfully disagrees, as Kim, like Murakami, is concerned with a hand-operated selector with an integral switch.

Fourth, the Appellant further alleges in regard to Kim, *“the actuator button 53 cannot be considered a switch since the actuator button does not have any electrical connection.”*

The Examiner respectfully disagrees, as the Appellant argues a more limiting definition of a switch than what is being claimed. A switch is known to be defined as a device used to open, close, or divert an electrical circuit. In the instant case, actuation of push button 53 of Kim affects engagement of electrical contacts as described in col. 3, lines 34 – 40.

In view of the above response to the Appellant’s arguments, the Examiner maintains the rejection of claims 1, 3, 4, 8, 11 and 13.

In regards to claim 2, the Appellant alleges, “the switch adapter fails to include a means for electrical and/or optical signal transmission.”

The Examiner respectfully disagrees as Murakami clearly discloses (col. 4, lines 52 – 57) switch element 3 as a means to transmit electrical signals. Since Kim teaches

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the concept of integrating a switch into an adapter, the combination of Murakami and Kim discloses the switch integrated in the adapter including a means for transmitting electrical and/or optical signals as claimed.

In view of the above response to the Appellant's arguments, the Examiner maintains the rejection of claim 2.

In regards to claim 5, the Appellant alleges, "*The push button 53 is not a switch as claimed as the push button 53 does not have any electrical features. Even assuming that the push button 53 could somehow be the equivalent of a switch (which Appellant maintains it is not), there is no teaching or suggestion of the push button 53 of Kim having any type of display part as claimed. Compared with Kim, the switch adapter of the present invention has a switch display part. This allows the display part to visually indicate to a driver the particular state of the transmission, such as whether the transmission is in drive or neutral.*"

As stated above, as the Appellant argues a more limiting definition of a switch than what is being claimed. Further, the Appellant argues a more limiting definition of a "switch display part" than what is being claimed. A display is known to be defined as anything displayed. Thus, given the broadest and reasonable interpretation of the limitation "display," the top surface of push button 53, which qualifies as a switch, meets the limitation a "switch display part," since this surface is visibly displayed to the operator.

In view of the above response to the Appellant's arguments, the Examiner maintains the rejection of claim 5.

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In regards to claim 6, the Appellant alleges, "Kim only teaches a push button 53, but there is no teaching or suggestion of the push button 53 of Kim having any type of display part as claimed. In fact, there is no teaching or suggestion in Kim for a switch display part that is located opposite the push button 53 as claimed.

As stated above, the Appellant argues a more limiting definition of a "switch display part" than what is being claimed. Further, the top surface of the push button 53, which is one piece integral with the main body of push button 53, is positioned above the main body of the push button 53. Thus, given the broadest and reasonable interpretation, the top surface of push button switch or the "switch display part" is located opposite that main body of the push button 53, which in this case, is regarded as the switch.

In view of the above response to the Appellant's arguments, the Examiner maintains the rejection of claims 6.

In regards to claim 7, the Appellant alleges, "*Murakami does not provide any teaching or suggestion that the vertical rib portions disposed between guides 9c are used for positioning the shift knob 1 as claimed.*"

The Examiner respectfully disagrees with the Appellant. As can be clearly seen in fig. 3, the constituent element 5 of knob 1 is in slotted engagement with rib elements disposed between bosses or guides 9c.

In view of the above response to the Appellant's arguments, the Examiner maintains the rejection of claims 7.

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In regards to claim 9, the Appellant first alleges, *“Murakami and Kim do not provide any teaching or suggestion for a switch adapter that is connected to a selector lever wherein the switch adapter is located at a position above a shift gate as featured in the present invention.”*

The Examiner respectfully disagrees in view of the Examiner's response to the Appellant's arguments for claim 1.

Further, the Appellant alleges, *“This claim should further be considered patentable based on the further limitation in that a person of ordinary skill in the art would not be directed to combine the teachings of Tucker in view of the Murakami reference and the Kim reference. Instead of being concerned with providing a wiring harness for a shift knob 1 as featured in Murakami, Tucker is concerned with the problem of connecting a two-stage, bi-directional shift lever vibration isolator.”*

The Examiner respectfully disagrees. Both Tucker and Murakami are concerned with user operated selectors for vehicle shifting, and both are concerned attaching a hand knob adapter to a selector lever via screw connection.

In view of the above response to the Appellant's arguments, the Examiner maintains the rejection of claim 9.

In regards to claim 10, the Examiner maintains the rejection in view of the Examiner's response to the Appellant's arguments for claim 1.

In regards to claim 12, the Appellant alleges, *“The references fail to teach or suggest a switch adapter that is located at a position above a shift gate and clearly fails*

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to suggest or teach this where the switch adapter has an actuator button connected to a switch."

The Examiner respectfully disagrees with the Appellant. For the reasons stated above in response to the Appellant's arguments for claim 1, the examiner maintains that the combination of Murakami and Kim discloses "a switch adapter that is located at a position above a shift gate" as claimed. Additionally, Murakami (Fig. 1) clearly discloses switch element 3 having an actuator button that would be integrated into the adapter 9 (Fig. 6) based on the teachings of Kim.

In view of the above response to the Appellant's arguments, the Examiner maintains the rejection of claim 12.

In regards to claim 14, the Examiner maintains the rejection in view of the Examiner's response to the Appellant's arguments for claim 6.

In regards to claim 15, the Examiner maintains the rejection in view of the Examiner's response to the Appellant's arguments for claim 1.

In regards to claim 17, the Appellant alleges, *"The references as a whole fail to teach or suggest a switch adapter that is located at a position above a shift gate and clearly fails to suggest or teach this where the switch adapter includes a line that provides electrical and/or optical signal transmission to a support structure."*

The Examiner respectfully disagrees. First, Murakami clearly discloses (Fig. 6 and col. 4, lines 52 – 57) conductor elements 3 a line that provides electrical signals to switch element 6. Since Kim teaches the concept of integrating a switch into an

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adapter, the combination of Murakami and Kim discloses the switch integrated in the adapter including a means for transmitting electrical and/or optical signals as claimed.

Second, as stated above, the applicant is silent to the criticality the "adaptor being located at a position above the shift gate" as claimed. It appears that the adaptor of Murakami as modified by Kim would not encounter any unexpected results with a portion of the adaptor being positioned below or completely above the shift gate. The advantageous affect of the combination facilitates the preassembly of the switch to the selector lever prior to the assembly of the shift gate. Therefore, all electrical connections required are made without the hindrance of shift gate. As such, the adapter according to the combination of Murakami and Kim would appear to work equally well at a position above or partially below the shift gate, since it merely serves to provide cable routing, positioning and retention assurance.

In regards to claim 18, the Examiner maintains the rejection in view of the Examiner's response to the Appellant's arguments for claim 7.

In regards to claim 19, the Examiner maintains the rejection in view of the Examiner's response to the Appellant's arguments for claim 1.

In regards to claim 20, the Examiner maintains the rejection in view of the Examiner's response to the Appellant's arguments for claim 6.

In regards to claim 21, the Examiner maintains the rejection in view of the Examiner's response to the Appellant's arguments for claim 1.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/PHILLIP A. JOHNSON/

Examiner, Art Unit 3656

Conferees:

Victor Batson /vdb/

Supervisory Patent Examiner, Art Unit 3677

Vinh Luong/V. T. L./

Primary Examiner, Art Unit 3656